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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of : PATENT
Jens Laurvig HAUGAARD :
Serial No.: 10/570,764 : Art Unit: 3753
Filed: August 22, 2006 : Examiner: J. C. Fox
For: CONSTRUCTION-KIT SYSTEM : Appeal No. _____

BRIEF ON APPEAL

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**APPELLANT'S BRIEF
ON APPEAL UNDER 37 C.F.R. § 41.37**

COMMISSIONER FOR PATENTS
P.O. Box 1450
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Sir:

For the appeal to the Board of Patent Appeals and Interferences from the decisions dated September 12, 2008 and February 3, 2009 of the Primary Examiner twice and finally rejecting claims 9-21 in connection with the above-identified application, Applicant-Appellant submits the following brief in accordance with 37 C.F.R. §41.37.

1. Real Party in Interest

The inventor, Jens Laurvig HAUGAARD, assigned his/her entire right, title and interest in the patent application to Hydac Accessories GmbH of Sulzbach/Saar, Germany.

2. Related Appeals and Interferences

There are no other related appeals or interferences known to Appellants, Appellants' legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

3. Status of Claims

Claims 1-8 are cancelled. Claims 9-21 are pending, are rejected, and are on appeal.

4. Status of Amendments

Subsequent to the September 12, 2008 Office Action containing the final rejection, no amendment of the claims was filed.

A December 22, 2008 Response in reply to the final Office Action was filed and considered in the February 3, 2009 Advisory Action.

5. Summary of the Invention

Independent claim 9 covers a modular hydraulic system comprising at least one primary valve block 10 and at least first and second groups 12 and 14 of connecting lines, all connected in fluid communication at one point by a connecting line of the first group 12 (Fig. 1; p. 5, lines 14-16). At least two of the connecting lines of the first group 12 are connected in fluid communication to a respective connecting line of the second group 14 (Fig. 1; p. 5, lines 16-17). At least three dummy components 18 are provided for receiving definable valve components, and are connected to the connecting lines of the second group 14 (Fig. 1; p. 5, lines 17-19). At least two second dummy components 20 are connected between a common connecting line 14a of the

second group 14 and another associated connecting line 14b of the second group (Fig. 1; p. 5, lines 19-21).

By arranging the modular hydraulic system in this manner, individual valve components can be associated with each dummy component such that, together with other components, they perform the necessary and desired functions for the operation of the modular hydraulic system. In this manner, the primary valve block is configured as a matrix with transverse and longitudinal rows, together with the dummy components, permit performing a large number of system functions in a space saving and cost-effective manner.

6. Grounds for Rejection to be Reviewed on Appeal

Claims 9-21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,080,983 to Stumpmeier.

7. Argument

A. The Rejection

Claims 9-21 stand rejected under 35 U.S.C. §103 as being unpatentable over U.S. Patent No. 4,080,983 to Stumpmeier. The Stumpmeier patent is cited for disclosing a modular valve system in which lines A, B, F, P, and T are allegedly analogous to connecting lines 14 of this application and in which the lines connecting the valves are allegedly analogous to connecting lines 12 of this application. Distributor modules are allegedly disposed in Stumpmeier transverse bores 8 along lines A, B, F, etc. providing different connections and functions, including connecting adjacent lines, any one of which can be designated as “dummy” components. The particular claimed configuration is alleged to be obvious in view of the Stumpmeier flexibility.

The use of pressure gages or 3/2 valves with the Stumpmeier valve base is alleged to be obvious. The choice of a tank is also considered to be obvious. The Stumpmeier system allegedly includes components comparable to components that connect lines of the second group, with reference being made in the statement of the final rejection (i.e., the September 12, 2008 Office Action) to the component in the left most position of Figure 5 (section E-F) of this Stumpmeier patent and with the contention that channels T, P, A, B, F correspond to the lines 14 of this application. In the Advisory Action, the rejection is substantially modified to rely on the Figure 11 module with the allegations that such module joins two lines, that the use of that module “in a plurality of bores 8 is considered to be well within the ambit of §103” and that “such a configuration would meet the claim language.” Relative to the dependent claims, it is alleged that “Figure 10 shows blocking a flow line and Figure 12 shows valving.”

B. Claim 9 is Patentably Distinguishable over the Stumpmeier Patent

The Stumpmeier patent discloses a valve base with parallel channels F, T, A, B and P. Holes in the body 1 communicate with the channels and receive hydraulic valves. Transverse bores 8 are provided for receiving distributor modules of different types, and intersect the coplanar passages T, P, A, B and F to enable connections required for a desired hydraulic circuit between those channels. However, none of the valves to be located in the holes provide at least three first dummy components coupled to the connecting lines of the second group and at least two second dummy components connected between a common connecting line of the second group and another associated connecting line of the second group. No comparison between the Stumpmeier system and that recited in the claims of this application demonstrates the presence of

this arrangement in the Stumpmeier patent, particularly of the second dummy components connecting to second group lines. No valves connect the Stumpmeier bores 8.

The rejection of the September 12, 2008 Office Action involves a misinterpretation of the drawing of Figure 5. The component in the left hand most box of Figure 5 merely provides flow in two directions, but not a connection between the flows through channel F and bore 8 of the Stumpmeier patent. The representation in Figure 3 shows that there is no such fluid connection, and that the flows through channel F and bore 8 are separated. The representation of Figure 5 also shows there is no connection because of the omission of a dot between the two double headed arrows. A dot connecting the arrows is needed to represent a fluid connection, as particularly shown by a comparison of Figures 9-11 of the Stumpmeier patent, where Figure 9 with no dot shows no connection and where Figures 10 and 11 with dots show connections.

In the Advisory Action, the Examiner concedes that section EF shown in Figure 6 corresponds to the component in the left hand most box of Figure 5 and does not join two sets of lines, and thus, does not meet the claim limitation. The rejection is then modified to refer to the Figure 11 module, with the allegation that using that module in a plurality of bores 8 is obvious.

None of the other connections provide a coupling in fluid communication between any two of the channels A, B, F, P and T. Thus, no suggestion, teaching or reason is provided by the Stumpmeier patent that it would be obvious to provide a connection corresponding to component 20 of this application between two lines of the second group, as claimed. While various Stumpmeier components can be replaced, there is no suggestion or reason in that patent for using these components to provide these specific connections recited in claim 9 of this application.

Moreover, the proposed use of the Figure 11 module in a plurality of bores 8 is not shown to meet the claim limitations.

In the final rejection, the Stumpmeier lines connecting valves are interpreted to correspond to the claimed connecting lines of the first group. The Stumpmeier “lines connecting to the valves” are the holes in the upper surface of body 1 and illustrated in Figure 1 as the dark circles labeled T, A, P and B, as described in column 5, lines 6-10, of the Stumpmeier patent. Each of such Stumpmeier holes is perpendicular to the respective channel T, A, P and B (interpreted as corresponding to the claimed channels of the second group), and is only connected to a single one of such of those Stumpmeier channels. The Stumpmeier holes, relied upon for the claimed first group of channels, then do not connect all the connecting lines in fluid communication at one point by a connecting line of the first group, as recited in claim 9, lines 3-4.

When no reference discloses a feature of a claim relied on to distinguish the prior art, there can be no suggestion to modify the prior art to contain that feature. In re Civitello, 339 F.2d 243, 144 USPQ 10 (C.C.P.A. 1964). As stated in W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 220 USPQ 303, 311 (Fed. Cir. 1983), there must be something in the teachings of the cited patents to suggest or to provide a reason to one skilled in the art that the claimed invention would be obvious.

Despite the simple concept of the invention, the Examiner has the burden of finding “the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of [the] invention to make the combination in the manner

claimed.” See In re Werner Kotzab, 217 F.3d 1365, 1371, 55 USPQ 2d 1313, 1318 (Fed. Cir. 2000). Here, the necessary factual findings are missing, rendering the rejection untenable.

The Examiner, in this situation has not pointed to any specific principle or motivation in the prior art that would lead one skilled in the art to arrive at the invention as claimed.

“[P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.” In re Werner Kotzab, 217 F.3d at 1371, 55 USPQ 2d at 1318. If no particular finding can be made as to the reason one skilled in the art would have used the Stumpmeier system to produce the claimed invention, the Examiner cannot properly hold the claimed invention obvious.

The Examiner is using the Examiner’s knowledge of the invention, in hindsight, to conclude improperly that one skilled in the art would have found it obvious to make the proposed modification. However, such “hindsight reconstruction” is impermissible in reaching a finding of obviousness. See, e.g., W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983).

Accordingly, claim 9 is patentably distinguishable over the Stumpmeier patent.

C. Dependent Claims

Claims 10-21 being dependent upon claim 9, are also allowable for the above reasons. Moreover, these dependent claims recite additional features further distinguishing them over the cited patents. These additional features are not addressed in the Office Action.

(1) Claim 10

Claim 10 is further distinguishable by at least one dummy component being unoccupied by a valve component, blocking a respective fluid conducting passage of at least one connecting line of the first and second groups, or forming a fluid-connecting path between connecting lines of the second group. No such arrangement is shown to be disclosed in or obvious from the Stumpmeier patent.

(2) Claim 11

Claim 11 is further distinguishable by the primary valve block comprising external side connecting points, particularly within the overall claimed combination. No such arrangement is shown to be disclosed in or obvious from the Stumpmeier patent.

(3) Claim 12

Claim 12 is further distinguishable by the specific additional components recited, particularly within the overall combination. No such arrangement is shown to be disclosed in or obvious from the Stumpmeier patent.

(4) Claim 13

Claim 13 is further distinguishable by the use of a secondary connection block comprising additional dummy components. No such arrangement is shown to be disclosed in or obvious from the Stumpmeier patent.

(5) Claim 14

Claim 14 is further distinguishable by the first dummy components receiving valve components, within the overall claimed combination. No such arrangement is shown to be disclosed in or obvious from the Stumpmeier patent.

(6) Claim 15

Claim 15 is further distinguishable by the valve component being pressure control valves, return valves, chokes of diaphragms. No such arrangement is shown to be disclosed in or obvious from the Stumpmeier patent.

(7) Claim 16

Claim 16 is further distinguishable by the additional dummy components being switching valves, pressure control valves or valves functioning as a pressure scale. No such valves are shown to be disclosed or obvious in the Stumpmeier patent.

(8) Claim 17

Claim 17 is further distinguishable by the switching valves being 2/2-way switching valves or 3/2-way switching valves. No such valves are shown to be disclosed or obvious in the Stumpmeier patent.

(9) Claim 18

Claim 18 is further distinguishable by the arrangement of the dummy components in groups. Such arrangement is not shown to be disclosed or obvious in the Stumpmeier patent.

(10) Claim 19

Claim 19 is further distinguishable by the groups being of 2 and 3 dummy components.

Such groups are not shown to be disclosed or obvious in the Stumpmeier patent.

(11) Claim 20

Claim 20 is further distinguishable by the claimed tank module. Such tank module is not shown to be disclosed or obvious in the Stumpmeier patent.

(12) Claim 21

Claim 21 is further distinguishable by the tank parts of varying modules. No such modules are shown to be disclosed or obvious in the Stumpmeier patent.

8. Conclusion

Accordingly, the rejections of claims 9-21 are untenable. Prompt and favorable action reversing those rejections is solicited.

Respectfully submitted,



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APPENDIX A – CLAIMS ON APPEAL

9. A modular hydraulic system, comprising:

at least one primary valve block;

at least first and second groups in the primary valve block of connecting lines all connected in fluid communication at one point by a connecting line of said first group;

at least two other connecting lines of said first group being connected in fluid communication to a respective connection line of said second group;

at least three first dummy components for receiving definable valve components connected to the connecting lines of said second group; and

at least two second dummy components connected between a common connecting line of said second group and another associated connecting line of said second group.

10. A modular hydraulic system according to claim 9 wherein

at least one of said dummy components is one of unoccupied by a valve component, blocking a respective fluid-conducting path of at least one connecting line of the first and second groups and forming a fluid-conducting path between connecting lines of said second group.

11. A modular hydraulic system according to claim 9 wherein

said primary valve block comprises external circumference side connecting points for optional and partial common connection of additional components.

12. A modular hydraulic system according to claim 11 wherein
said additional components are selected from the group consisting of pressure gauges,
hydraulic pumps, cooler units, filter units, hydraulic accumulators, additional valve components,
hydraulic tanks, electric and electronic control components including sensors and switching
magnets, and at least one secondary connection block.

13. A modular hydraulic system according to claim 12 wherein
said secondary connection block comprises additional dummy components.

14. A modular hydraulic system according to claim 9 wherein
said first dummy components receive valve components.

15. A modular hydraulic system according to claim 14 wherein
said valve components are selected from the group consisting of pressure control valves,
return valves, chokes and diaphragms.

16. A modular hydraulic system according to claim 13 wherein
said additional dummy components are selected from the group consisting for switching
valves, pressure control valves and valves functioning as a pressure scale.

17. A modular hydraulic system according to claim 16 wherein
said switching valves comprise one of a 2/2-way switching valve and a 3/2-way switching
valve.

18. A modular hydraulic system according to claim 9 wherein
said first and second dummy components are arranged in function groups spatially
separated from the connecting lines of said first group.

19. A modular hydraulic system according to claim 18 wherein
said first and second dummy components are arranged in the function groups of one of
two and three.

20. A modular hydraulic system according to claim 11 wherein
one of said additional components comprises a hydraulic tank module having a plurality
of tank parts with connecting points for connection to other components.

21. A modular hydraulic system according to claim 20 wherein
said tank parts have varied volumes.

APPENDIX B - EVIDENCE

None

APPENDIX C – RELATED PROCEEDINGS

None